

REFERENCE TITLE: professional employer organizations; agreements

State of Arizona
House of Representatives
Forty-ninth Legislature
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2009

HB 2087

Introduced by
Representatives Reagan, Crandall, Meza, Quelland: Campbell CH, Campbell
CL, McLain

AN ACT

AMENDING SECTION 23-562, ARIZONA REVISED STATUTES; RELATING TO PROFESSIONAL EMPLOYER ORGANIZATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 23-562, Arizona Revised Statutes, is amended to
3 read:

4 23-562. Professional employer agreements; rights; notice

5 A. A professional employer agreement shall:

6 1. Govern the co-employment relationship between the client and the
7 professional employer organization and between each co-employer and each
8 covered employee.

9 2. Reserve to the client the right to direct and control covered
10 employees to the extent necessary to conduct the client's business and to
11 discharge any fiduciary responsibility or to comply with any licensing
12 requirement that applies to the client or a covered employee.

13 3. Require the professional employer organization to pay the wages of
14 covered employees, to withhold, collect, report and remit payroll-related and
15 unemployment taxes and to make payment for employee benefits for covered
16 employees. For the purposes of this paragraph, wages do not include
17 obligations between a client and a covered employee that exceed a covered
18 employee's salary, bonuses, commissions, severance pay, deferred
19 compensation, profit sharing or vacation, sick or other paid time off pay
20 unless the professional employer organization expressly agrees to assume
21 liability for the additional obligations in the professional employer
22 agreement.

23 4. Permit both the professional employer organization and client to
24 have a right to hire, terminate and discipline covered employees.

25 5. Specify whether the client or the professional employer
26 organization will purchase and maintain the workers' compensation policy
27 UNDER AN INDIVIDUAL OR MASTER POLICY for covered employees from a carrier
28 that is licensed to conduct business in this state. If the professional
29 employer organization purchases the workers' compensation policy, the
30 professional employer organization shall maintain and, if requested by the
31 client on termination of the agreement, be able to provide to the client
32 records regarding the loss experience related to the workers' compensation
33 insurance that is provided to the covered employees.

34 B. A professional employer agreement shall not:

35 1. Affect, modify or amend any collective bargaining agreement or any
36 rights or obligations of any client, professional employer organization or
37 covered employee that are required under the federal national labor relations
38 act, the federal railway labor act or this title.

39 2. Affect, modify or amend any state, local or federal licensing,
40 registration or certification that is required by any client or covered
41 employee.

42 3. With respect to a bid, contract, purchase order or agreement
43 entered into with this state or a political subdivision of this state, affect
44 the status of a client's company as a small, minority-owned, disadvantaged or
45 woman-owned business enterprise or as a historically underutilized business

1 because the client entered into a professional employment agreement with a
2 professional employer organization.

3 4. Diminish, abolish or remove any rights of covered employees to any
4 clients or obligations of clients to any covered employees that existed
5 before the effective date of a professional employer agreement.

6 5. Terminate an employment relationship that existed before the
7 effective date of a professional employer agreement.

8 6. Establish new or additional enforceable rights of a covered
9 employee against a professional employer organization that are not
10 specifically allocated to the professional employer organization under the
11 professional employer agreement or this article.

12 C. Unless specifically provided in a professional employer agreement
13 or this article:

14 1. The client shall perform all responsibilities that otherwise apply
15 to an employer in an employment relationship.

16 2. The professional employer organization shall perform only the
17 responsibilities that are specifically required under this article or a
18 professional employer agreement. The rights, duties and obligations of a
19 professional employer organization as a co-employer with respect to any
20 covered employee are limited to the responsibilities that are contained in
21 the professional employer agreement and that arise during the term of
22 co-employment by the professional employer organization for the covered
23 employees.

24 D. Every professional employer organization that enters into a
25 professional employer agreement shall provide notice to each covered employee
26 who is affected by the agreement. The notice may be included in the form of
27 the employment documents that a covered employee completes for the
28 professional employer organization.